

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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Phoenix, Arizona 85007
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4 KAY H. REMEIN,)
5 Appellant,) Docket No. 1861-01-1
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
10)

11 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
12 having taken the matter under advisement, finds and concludes as follows:

13 FINDINGS OF FACT

14 Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the
15 Arizona Department of Revenue (the "Department") learned that Kay H. Remein ("Appellant"), an Arizona
16 resident, earned income in 1998 but failed to file an Arizona individual income tax return for that year.

17 Subsequently, the Department issued a proposed assessment of additional income tax, penalties
18 for failure to file a return and failure to file on demand, and interest for tax year 1998. This assessment
19 was based on Appellant's federal adjusted gross income as reported by the IRS.

20 Appellant timely protested the assessment to the Department's hearing officer who upheld the
21 assessment. Appellant then protested the hearing officer's decision to the Director of the Department
22 who affirmed the hearing officer's decision. Appellant now timely appeals to this Board.

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1 A.R.S. § 41-1003 indicates that "(e)ach agency shall make rules of practice setting forth the
2 nature and requirements of all formal procedures available to the public." Emphasis added. Appellant
3 asserts that the use of the term "shall" indicates that the Department is mandated to promulgate rules
4 regarding assessments and without these rules the issuance of assessments is void. However, A.R.S.
5 § 42-1005 provides that the Director of the Department shall "[m]ake such administrative rules, as he
6 *deems necessary and proper* to effectively administer the department and enforce [title 42] and title 43."
7 Emphasis added.

8 In *Hamilton v. State of Arizona*, 186 Ariz. 590, 595, 925 P.2d 731 (1996), the court "reject(ed)
9 the taxpayer's contention that because DOR expressed its interpretation of 'adjusted gross income as
10 defined by the department' through Form 140-PTC rather than by a rule promulgated as required by
11 A.R.S. § 41-1003." . . . DOR's interpretation was void and could not be applied" The court indicated
12 that the plain meaning of the statute allowed the Department to define "adjusted gross income" and it was
13 not necessary to promulgate a rule to achieve the same purpose. Likewise, the statute governing
14 assessments is clear and it is not necessary to promulgate additional rules.

15 A.R.S. § 41-1092(1) provides that an "Administrative law judge" means an individual or an agency
16 head, board or commission that sits as an administrative law judge, that conducts administrative hearings
17 in a contested case or an appealable agency action and that makes decisions regarding the contested
18 case or appealable agency action. Appellant argues that this statute requires that a tax protest to the
19 Department be heard by a hearing officer with the Office of Administrative Hearings. A.R.S. § 41-
20 1092.02, entitled "Appealable agency actions; application of procedural rules; exemption from article,"
21 provides that

22 A. This article applies to all contested cases as defined in section 41-1001 and all
23 appealable agency actions, except contested cases with or appealable agency actions
24 of:

25 10. The department of revenue regarding income tax, withholding tax or estate tax or
any tax issue related to information associated with the reporting of income tax,
withholding tax or estate tax.

This statute exempts the Department's hearings on income tax matters from the purview of the
Office of Administrative Hearings. Further, the hearing office of the Department's Appeals Section is

1 physically and organizationally separate from other units within the Department and is not accountable to
2 any enforcement unit and the Department's hearing officers satisfy the pertinent statutory qualifications.

3 For the foregoing reasons, the Department's assessment is valid; therefore, Appellant is liable for
4 the tax at issue. Further, Appellant has not shown that her failure to timely file an income tax return or to
5 timely file a return on notice and demand of the Department was due to reasonable cause and not willful
6 neglect; therefore, the penalties imposed may not be abated. A.R.S. § 42-1125(A) and (B). Finally,
7 because the interest imposed represents a reasonable interest rate on the tax due and owing and is
8 made part of the tax by statute, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841
(1934).

9 CONCLUSIONS OF LAW

10 1. The assessment is valid, and Appellant is liable for the tax assessed. See *Arizona State Tax*
11 *Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. §§ 42-1108, 1109, 1251.

12 2. Because Appellant has not shown that her failure to timely file an income tax return or to
13 timely file a return on notice and demand by the Department was due to reasonable cause and not willful
14 neglect, the penalties imposed may not be abated. A.R.S. § 42-1125(A) and (B).

15 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is
16 made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30
17 P.2d 841 (1934).

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
20 Department is affirmed.

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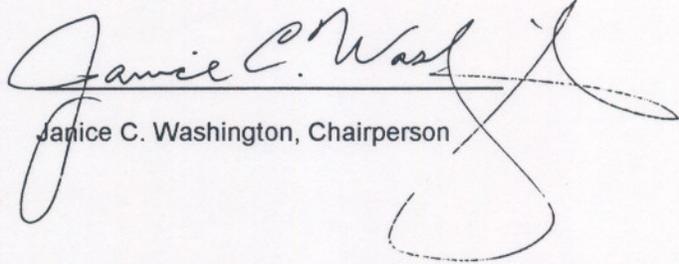
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 27th day of August , 2002.

4 STATE BOARD OF TAX APPEALS

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6 
7 Janice C. Washington, Chairperson

8 JCW:ALW

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

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